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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL T. PARSONS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 64A04-0807-CR-429
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Roger V. Bradford, Judge
Cause No. 64D01-0609-FA-7869

March 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Michael Parsons appeals the twenty-eight year sentence imposed following his plea of guilty to: child molesting, a Class B felony; sexual misconduct with a minor, a Class B felony; child exploitation, a Class C felony; and criminal confinement, a Class D felony. For our review, Parsons raises a single issue, which we expand and restate as two issues: 1) whether the trial court properly sentenced him; and 2) whether his sentence is inappropriate in light of the nature of his offenses and his character. Concluding the trial court properly sentenced Parsons's and his sentence in not inappropriate, we affirm.

Facts and Procedural History

Parsons was formerly married to D.B.'s mother. After Parsons and D.B.'s mother divorced, D.B. continued to live with Parsons after her mother moved to a different town so that she could continue to attend school with her friends. Over the course of five years, Parsons sexually molested D.B. in almost every conceivable way. Beginning when D.B. was ten years old, Parsons subjected D.B. to: masturbation with his hand and with vibrators and dildos; receiving and performing oral sex; sexual intercourse; forced restraint and bondage; and rape. On many occasions, Parson forced D.B. to wear his fireman's breathing apparatus with tape covering the faceplate and a sock stuffed into the breathing receptacle or other types of blindfolds. Parsons routinely restrained D.B.'s hands and legs to the bedposts or to a home-made restraining board in his garage. Parsons took photographs of D.B. in the nude and engaging in sexual activity. Parsons also gave D.B. marijuana, alcohol, and cigarettes. We refrain from providing a more detailed description of the abuse committed by Parsons but note its severity caused the

trial court to comment that "in the almost 28 years that I've been doing this, I don't know how many child molesting cases I've sentenced. … This is by far the most egregious case of mistreatment, sexual mistreatment of a child I have ever seen." Transcript of Sentencing Hearing at 29.

D.B. eventually told a friend about the molestation. This friend encouraged and assisted D.B. to report the abuse to D.B.'s grandmother, the school counselor, and the police. Parsons was subsequently arrested and charged with three counts of child molesting, two Class A felonies and one Class C felony; one count of rape, a Class B felony; two counts of sexual misconduct with a minor, Class B felonies; one count of child exploitation, a Class C felony; and one count of criminal confinement, a Class D felony. The State later amended the charging information to add two counts of sexual misconduct with a minor, Class C felonies, and three counts of contributing to the delinquency of a minor, Class A misdemeanors. Some of these amended charges stemmed from incidents involving D.B.'s friends.

Parsons entered into a plea agreement whereby he agreed to plead guilty to one count of child molesting, reduced from a Class A felony to a Class B felony; one count of sexual misconduct with a minor, a Class B felony; one count of child exploitation, a Class C felony; and one count of criminal confinement, a Class D felony. In return the State agreed to dismiss the remaining nine charges. The plea agreement allowed the parties to argue sentencing, but required the sentences for the two Class B felonies to be served concurrently, the sentences for the Class C and Class D felonies to be served

concurrently, and the two sets of sentences to be served consecutively. Following a change of plea hearing, the trial court accepted Parsons's guilty plea.

At the sentencing hearing, the trial court heard testimony from D.B., D.B.'s mother, and Parsons's mother, allowed Parsons to make a statement on his own behalf, and heard arguments from both counsel. The trial court found Parsons's lack of criminal history and his expression of remorse as mitigating circumstances. The trial court did not consider the guilty plea as a mitigating circumstance because Parsons received the substantial benefit of having the Class A felony count reduced to a Class B felony and nine other counts dismissed. As aggravating circumstances, the trial court found that Parsons was in a position of trust as D.B.'s stepfather and primary caregiver, the severe emotional and psychological effect on D.B., the repeated nature of the offenses, and the egregious nature of the crimes committed. The trial court found that the aggravating circumstances far outweighed the mitigating circumstances and sentenced Parsons to the maximum of twenty years for each Class B felony, eight years for the Class C felony, and three years for the Class D felony resulting in a total executed sentence of twenty-eight years. Parsons now appeals.

Discussion and Decision

I. Standard of Review

A trial court may impose "any sentence that is: (1) authorized by statute … regardless of the presence or absence of aggravating or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). We review a trial court's sentencing decision for an abuse of discretion, which occurs only when the trial court's decision is clearly against the logic

and effect of the facts and circumstances before the court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218.

II. Propriety of Sentence

Parsons argues that the trial court improperly considered the impact of the crime on the victim and the egregious nature of the crimes as aggravating circumstances. Our supreme court has stated "where there is nothing in the record to indicate that the impact on the families and victims in this case was different than the impact on families and victims which usually occur [sic] in such crimes," consideration of victim impact as a separate aggravator is improper. McElroy v. State, 865 N.E.2d 584, 590 (Ind. 2007) (quotation and citation omitted).

D.B.'s mother testified that:

> [D.B.] has nightmares. She battles with anxiety and severe depression. She has tried to kill herself more than once. She goes to counseling once a week. She no longer runs track. Her grades have dropped from straight A's to C's, D's and F's. She's running with the wrong crowd. [D.B.] no longer dreams of going to college. She no longer wants to have kids of her own. And she doesn't believe she even wants to live to be thirty.

Transcript of Sentencing Hearing at 5-6. D.B.'s own testimony presents a disquieting account of the impact of Parsons's crimes:

> [I] live with anxiety, depression, sadness and despair. Alone with myself. My hopes and dreams are gone. I struggle to get through life. I think about what you have done with me while I'm awake and while I'm asleep, causing me to have nightmares and flashbacks about what you have done to me. It keeps me awake. I lie in bed and just think about the next day and what's going to happen. It happens to me at school. I think about it all the time. I can't concentrate on my school work.
>
> I don't even care about school any more. I feel like it's a waste of my time.
>
> I have trust issues with m[y] friends.

. . .

> I have no self confidence. I don't think I'm pretty. I don't think I can do things that I think I should be able to do. Like getting into college and having a good life and getting married and having children. I don't want any of that any more. I don't. I just don't want to do it.

Tr. of Sentencing Hearing at 7-8.

We have no difficulty believing that the depravity of Parsons's crimes produced an impact on D.B. far beyond that normally experienced by a molestation victim. However, even if we accept Parsons's argument that there is no evidence in the record to support a finding that D.B. was impacted differently than a typical victim, the remaining aggravating circumstances are more than sufficient to warrant the trial court's imposition of maximum sentences. Parsons's prolonged molestation of D.B., which encompassed the outer fringes of sexual deviancy, forcing D.B. to endure pain, fear, confinement, and helplessness while at the same time sexually molesting her, makes this crime particularly heinous. In addition, Parsons abused a position of trust and authority over D.B., whom he had agreed to care for and protect.

Parsons also argues that the trial court did not properly consider his guilty plea as a mitigating circumstance. "The extent to which a guilty plea is mitigating will vary from case to case." Hope v. State, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). A guilty plea is not necessarily a significant mitigating circumstance. Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). A guilty plea's significance is diminished if there was substantial admissible evidence of the defendant's guilt, Scott v. State, 840 N.E.2d 376, 383 (Ind. Ct. App. 2006), trans. denied, and is also diminished in direct proportion to the benefit

realized by the defendant in accepting it, Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005).

Initially, we point out that the evidence against Parsons was substantial. D.B. gave detailed, specific accounts of her molestation and identified numerous sexual implements and restraints used by Parsons to molest her. The police searched Parsons's home with a valid search warrant and recovered all of the items described by D.B. Secondly, in exchange for Parsons pleading guilty to four felony counts, the State dismissed six other felony counts and three misdemeanor counts. The State also reduced one of the charges to which Parsons pled guilty from a Class A felony to a Class B felony. Therefore, the trial court did not err when it gave no weight to Parsons's guilty plea as a mitigating circumstance. In addition, even if the guilty plea were considered as a mitigating circumstance, it would not counteract the overwhelming nature of the aggravating circumstances. As a result, we cannot say that the trial court abused its discretion in concluding that the aggravating circumstances outweighed the mitigating circumstances.

III. Appropriateness of Sentence

Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence if, after due consideration of the trial court's decision, we find that the sentence "is inappropriate in light of the nature of the offense and the character of the offender." Id. When making this decision, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 196 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) ("[I]nappropriateness review should not be limited … to a

simple rundown of the aggravating and mitigating circumstances found the by the trial court."). However, the defendant bears the burden to "persuade the appellate court that his … sentence has met this inappropriate standard of review." Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

A. Nature of the Offense

Parsons received an aggregate sentence of twenty-eight years, the maximum sentence the trial court could impose in light of the terms of the plea agreement. This court has often remarked that "the maximum enhancement permitted by law should be reserved for the very worst offenses and offenders." Westmoreland v. State, 787 N.E.2d 1005, 1011 (Ind. Ct. App. 2003). In considering the appropriateness of a maximum punishment we should focus "on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character." Roney, 872 N.E.2d at 207 (quoting Brown v. State, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002). We can hardly envision crimes more worthy of the maximum punishment than those committed by Parsons against D.B. Parsons inflicted monstrous long-term sexual, physical, and emotional abuse on D.B. Thus, the nature of the offenses does not render Parsons's sentence inappropriate.

B. Character of the Offender

Regarding Parsons's character, we note that he expressed remorse before the trial court and he pled guilty to some of the offenses. However, Parsons also received substantial benefits in return for his guilty plea. Had Parsons been convicted of the Class A felony child molestation charge alone, he could have faced more jail time than he

received under the plea agreement. See Ind. Code § 35-50-2-4 (Class A felony carries an advisory sentence of thirty years and a maximum sentence of fifty years). In addition, we point out that prior to his expressions of remorse, Parsons told police that D.B. wanted to participate in the sexual activity. The fact that Parsons does not have a history of criminal activity also weighs in favor of his character. However, this weight is offset by the long-term molestation he inflicted on D.B. and the atrocity of the abuse. Thus, Parsons's character does not render his sentence inappropriate.

Parsons bears the burden of establishing that his sentence is inappropriate in light of the nature of his offenses and his character. After due consideration of the trial court's decision, we are not convinced that Parsons has carried this burden. As a result, we conclude that Parsons's sentence is not inappropriate in light of the nature of his offenses and his character.

Conclusion

The trial court did not abuse its discretion when it sentenced Parsons to the statutory maximum sentences on all four counts, and Parsons's sentence is not inappropriate in light of the nature of his offenses and his character.

Affirmed.

CRONE, J., and BROWN, J., concur.